

HealthShare Victoria Graduated Compliance Guidelines

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Contents

1. Introduction	4
1.1 Purpose	4
1.2 Background.....	4
2. Compliance Framework	6
3. A graduated compliance approach	7
3.1 Graduated compliance values	7
3.2 The graduated compliance model	7
3.3 Applying the model.....	8
3.4 Compliance responses	9
4. Compliance information and support	12
4.1 Contact for further.....	12
4.2 Complaints.....	12
5. More information	12
6. Disclaimer	12

1. Introduction

1.1 Purpose

These guidelines outline the methodology applied by HealthShare Victoria¹ (HSV) in determining its response to non-compliance against the *Health Services Act 1988 (Vic)* (the Act) and supporting purchasing policies². HSV's graduated approach provides a framework which champions considered and measured responses to compliance issues.

1.2 Background

HSV is an independent public entity established under section 129 of the Act and is responsible to the Minister of Health, working closely with the Department of Health (DH).

Section 131 of the Act specifies HSV's functions, and those relevant to our compliance work program include:

- Monitoring public health service compliance with purchasing policies and HSV directions and reporting irregularities to the Minister.
- Ensuring probity is maintained in purchasing, tendering and contracting activities in public hospitals and public health services.
- Providing advice, staff training and consultancy services in relation to the supply of goods and services to, and the management of disposal of goods by, health or related services other than public hospitals.

On 26 June 2014, (updated in 2017) HSV introduced five new health purchasing policies (HPPs) in support of its statutory functions. The HPPs provided the strategic framework for health services to ensure best-practice procurement, including probity.

In November 2022 HSV published new purchasing policies called HSV Purchasing Policies (PPs), which come into effect on 1 January 2023 with compliance mandatory from 1 January 2024. These policies guide health services on best-practice procurement, offering:

- greater oversight of government spending;
- a principles-based approach to implementing probity strategy into internal procurement practices;
- the confidentiality of commercially sensitive information;
- simplified processes; and
- value for money.

HSV has developed the following probity principles for procurement:

- Consistency and transparency of procurement processes.
- Fairness and impartiality in conducting procurement processes.
- Identifying and managing conflicts of interest.
- Security and confidentiality of documents and information.
- Ensuring market equality.
- Allocating appropriate capability.

¹ HealthShare Victoria is the assumed trading name for Health Purchasing Victoria that remains as an independent public entity incorporated under the *Health Services Act 1988 (Vic)*.

² In accordance with subsection 134(1) of The Act, HSV has the power to prepare, make, amend and revoke instruments (known as purchasing policies) with respect to policies and practices (including probity) relating to the supply of goods and services to public hospitals and the management and disposal of goods by public hospitals. Health service compliance with these purchasing policies is a requirement under subsection 134(3) of The Act.

The good procurement practices that HSV promotes ultimately benefit all Victorians by advancing improved patient care and high-quality, financially-sustainable procurement outcomes.

Subsection 134(3) of the Act specifies that a public hospital must comply with each purchasing policy to the extent that it applies to the public hospital. The term 'public hospital' is defined under the Act, but broadly includes hospitals and public health services listed at Schedule 1 and 5 of the Act³. HSV refers to these health services as 'mandated' health services.

It is HSV's position that mandated health services are ultimately responsible for understanding and meeting their requirements under the Act, the HSV PP's and relevant HSV directions in force.

³ It is noted that the definition includes some limitations for the applicable health services.

2. Compliance Framework

The Compliance Framework forms the foundation of HSV’s compliance-related activities and is informed by HSV’s functions under the Act and the health service reporting requirements specified in HSV Purchasing Policy 1 Governance. This framework outlines three focal areas for HSV’s compliance program:

1. Support and prevention

HSV is committed to providing health services with the support, guidance and education to strengthen their ability to comply with the requirements of the HSV PPs and ensure that probity is maintained in health service procurement activities.

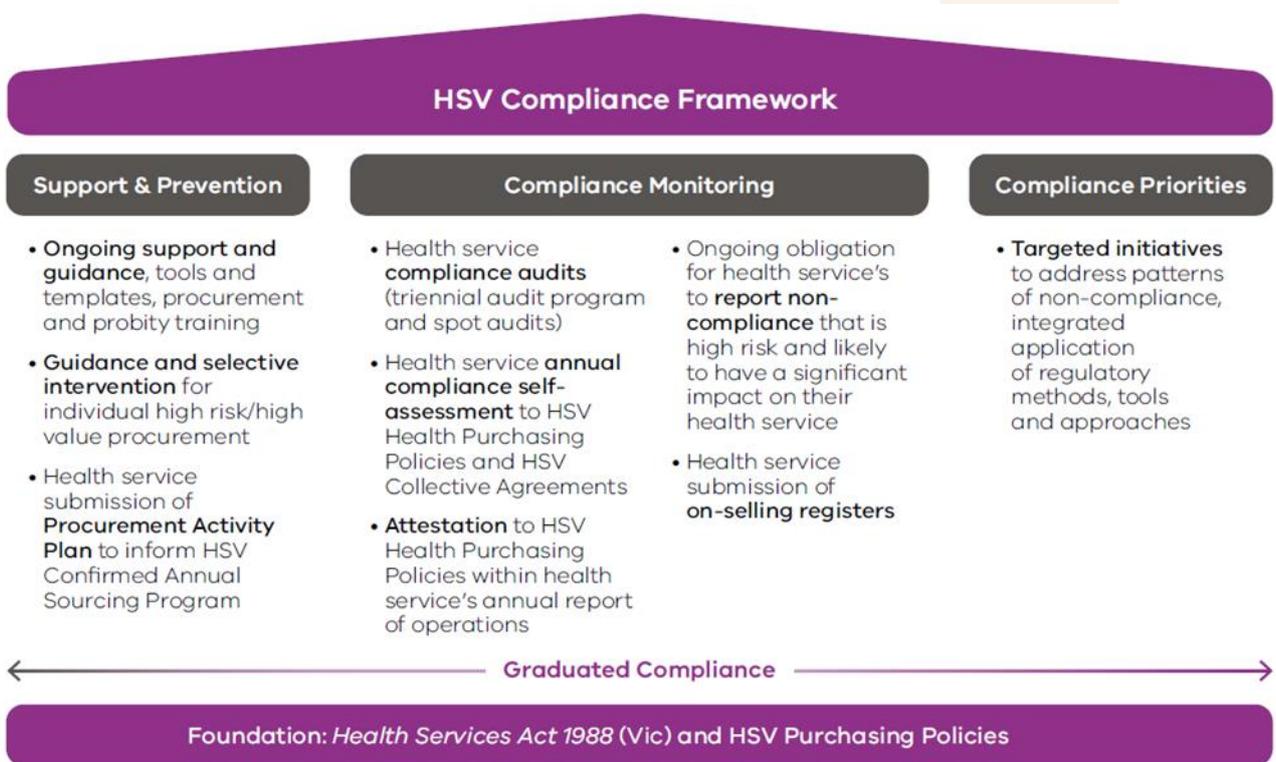
2. Compliance monitoring

HSV has a legislated responsibility under subparagraph 131(d) of the Act to monitor health service compliance with the HSV PPs and applicable HSV directions in force. This monitoring function is achieved through a number of health service reporting requirements, detailed further in the HSV Graduated Compliance Guidelines.

The reporting submissions that health services make are an essential information gathering tool for HSV and help to inform the appropriate compliance response required while contributing to the development of future compliance priority initiatives.

3. Compliance priorities

Targeted initiatives to address patterns of non-compliance, integrated application of regulatory methods, tools and approaches.



3. A graduated compliance approach

HSV's graduated compliance approach encourages measured and appropriate responses to compliance issues identified in health service reporting submissions or by other HSV information-gathering tools.

Through its implementation, the graduated compliance approach:

- Encourages the lowest level of intervention - such as education and support - in response to issues of non-compliance.
- Recognises the capacity of health service(s) to become compliant.
- Promotes compliance action proportionate to the level of risk.
- Provides sufficient flexibility to escalate or de-escalate compliance action if required.
- Champions an evidence-based decision-making process.
- Considers the behaviour and compliance history of the health service.

HSV operationalises this approach through graduated compliance values and the graduated compliance model.

3.1 Graduated compliance values

The following values provide a basis for the graduated compliance approach and are an extension of HSV's organisational values, listed below in bold text.



3.2 The graduated compliance model

The graduated compliance model is used when assessing and deciding upon an appropriate course of action to reported or identified non-compliance against the HSV Purchasing Policies or the Act.

The model operates by applying key assessment criteria on a case-by-case basis to instances of non-compliance or by taking a holistic approach to a health service's reporting submission. HSV's approach of weighing and balancing key criteria supports decision-making in a way that leads to more consistent compliance responses.

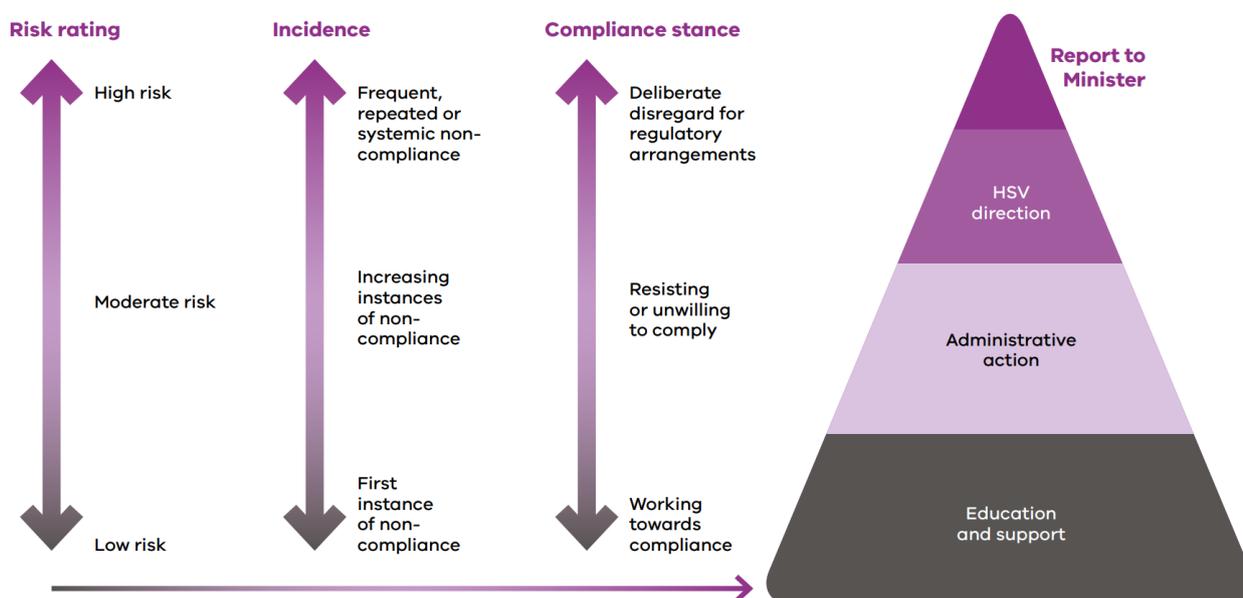
The model comprises four hierarchical layers:

- Education and support.
- Administrative action.
- HSV direction.
- Report to the Minister.

The model's multi-layer aspect ensures HSV has the flexibility to tailor our response to the circumstances of each matter under consideration, while providing the ability to escalate or de-escalate as required. Together, these layers and the model's pyramid structure reflect HSV's overall compliance approach.

The model promotes lower levels of intervention - such as education and support - which is HSV's preferred approach to compliance issues. However, where a stronger response is required and supported by HSV's analysis process, the model provides a clear escalation path. The implications of HSV's compliance decisions and the resource requirements on health services is at the forefront of our decision-making process in line with the graduated compliance values discussed earlier.

Graduated compliance model



3.3 Applying the model

In determining which layer of response is appropriate to the matter under consideration, HSV will:

1. Conduct a risk assessment (**Risk rating**). This risk assessment may be applied to an individual instance of non-compliance or to the overall outcome of a health service compliance report submission. Without limiting HSV's risk assessment process, the analysis may include consideration of:
 - HSV's Self-Assessment Tool.
 - The risk rating nominated by the health service and/or its auditor, if relevant.
 - The accepted level of risk for the health service, if communicated to HSV.
 - The extent of the compliance issues identified, and/or
 - The purchasing size of the health service.
2. Consider whether the non-compliance is recurring or the first reported instance (Incidence). This analysis includes consideration of the health service's compliance history and the results of previous reporting submissions. While most matters are considered on a case-by-case basis, the health service's compliance history may inform the progress made towards achieving compliance or indicate systemic compliance issues in which a stronger HSV response may be required.

3. Consider the health service's compliance standing (Compliance stance). The health service's disposition to the requirements of the Act and HSV Purchasing Policies generally will inform this assessment. Indicators of a poor compliance standing may include disengagement or failing to act in good faith with HSV's reporting requirements (i.e. a pattern of late submissions for health service reporting, recurrence of non-compliance issues).

A health service's compliance standing is particularly relevant when HSV is deciding whether to escalate or de-escalate its response. HSV may initially respond with an educational or supportive approach, but choose to escalate if the health service fails to demonstrate that it is working towards compliance and the decision to take stronger action is supported by a high inherent and residual risk rating.

A health service's audit report and subsequent findings are assessed holistically by HSV. If an 'education and support' response is considered appropriate, HSV will assist the health service to achieve compliance and continue to monitor and seek advice on the completion of health service recommendations for medium- or high-risk audit findings. Depending on the outcome of this interaction (compliance standing), and the risk of the matter under consideration (risk rating), HSV may decide to escalate its compliance response.

3.4 Compliance responses

The graduated compliance model exhibits four hierarchical layers for HSV's compliance response, which is tailored to the circumstances of each case or broader issue under consideration.

These broad categories are characteristic of the seriousness of the issue(s) being considered and level of intervention required. The layers and the various actions that may be implemented are detailed below. This guidance should not be treated as an exhaustive list.

In the interest of procedural fairness, HSV will inform the health service of our assessment and provide an opportunity to respond before taking further action. HSV recognises that procedural fairness promotes good governance and a fair decision-making process.

To assist health services to understand the application of the graduated compliance model, a number of scenarios are provided below with HPV's analysis broadly described.

Education and support

HSV's preference is to support health services to achieve compliance through cooperative measures. HSV support may include the following tools:

- Tailored advice and support from HSV's Customer Relationship Managers.
- Educational tools, resources and templates.
- Increased sector advice on the subject matter through HSV's communication channels.
- HSV online training, where broader health service education is required.
- Collaboration with other government departments.

HSV's compliance response under this layer may include one or a combination of educational tools.

Scenario 1

Yarra Health Service has submitted its annual self-assessment of compliance to the HSV Purchasing Policies and HSV collective agreements. The health service has identified that it is partially compliant to HSV Purchasing Policy 2 Strategic Analysis and detailed the reasons for this compliance rating and the actions it will take to rectify issues in the form comments. Otherwise, the health service is fully compliant to all HSV Purchasing Policies.

The HealthShare Victoria: Health Service Reporting Guidelines state that a partial compliance assessment means the health service has demonstrated it has achieved compliance for 75 per cent or more of the HSV Purchasing Policies.

This is the first instance of non-compliance for the health service, which has demonstrated it is working towards compliance. HSV determines that the risk, incidence and compliance standing of the health service supports an educational and supportive response.

During their next one-on-one session with the health service, a HSV Customer Relationship Manager discusses the outcomes of the self-assessment with the health service and recommends a number of HSV education resources.

Administrative action

HSV's compliance responses under the 'Administrative action' layer are firmer than in the lower tier and in direct proportion to the increased risk of the matter(s) under consideration. Cooperative measures for achieving compliance are promoted where the assessment is at the bottom end of the layer (i.e. near education and support). Stronger responses will be considered if further escalation is likely or the assessment process results at the top end of the layer (i.e. near HSV direction).

Informed by the circumstances of the matter under consideration, HSV's compliance response may include:

- Tailored advice and support from HSV's Compliance Team.
- Seeking confirmation of health service fulfilment of audit recommendations and/or agreed actions.
- Escalation within HSV (i.e. Executive Director of Finance, Risk and Governance or Chief Executive).
- Exercise of power under subparagraph 132(e) of The Act, requiring the health service to provide information and data relating to the supply of goods and services.

As illustrated in the graduated compliance model, the majority of compliance issues considered by HSV will be captured in the bottom two layers of the pyramid.

Scenario 2

HSV has assessed the Maribyrnong River Health Service's audit report and auditor findings. The audit report notes a number of medium-risk issues. Some of these audit issues had been identified in previous compliance reporting, in which HSV had adopted an educational and supportive approach based on our assessment at the time. However, the audit report outcomes have identified that the health service has failed to rectify these compliance issues as previously advised.

After conducting our assessment, HSV recommends a response of administrative action. In HSV's letter of response to the health service, HSV's Chief Executive advises of the outcomes of HSV's assessment under the graduated compliance model and that implementation of the audit recommendations will be followed up by HSV's Compliance Team.

The HSV Compliance Team subsequently makes contact with the health service's Chief Procurement Officer to request that status reports be provided on the implementation of audit recommendations, in line with the timeframes nominated by the health service in the audit report. The health service emails the team as these recommendations are actioned.

HSV direction

The 'HSV direction' layer is considered a serious response to non-compliance. In accordance with subparagraph 132(2)(c)(ii) of the Act, HSV has the power to give written directions to one or more public hospitals to ensure that probity is maintained in purchasing, tendering and contracting activities.

This written direction outlines:

- The outcomes of HSV's assessment under the graduated compliance model.
- The probity requirements which have been compromised or are at significant risk.
- Actions required of the health service under the direction and associated timeframe(s).

Subsection 132(3) of the Act provides that a HSV direction must be complied with, unless it is inconsistent with a contract entered by that hospital before HSV gave that direction.

Spot audit

Exercise of power under subparagraph 132(2)(d) requiring a spot audit to be conducted.

HSV does not take a decision to conduct a spot audit lightly and will only consider this response if we have significant concerns or grounds for further escalation. A spot audit would be treated as an information-gathering tool rather than a measure for encouraging compliance. Triggers for conducting a spot audit may include:

- Significant irregularities with the health service's compliance reporting submissions.
- Evidence to support systemic non-compliance within the health service.
- Any other information that HSV receives which raises serious concern about a health service's compliance with the HSV Purchasing Policies (i.e. protected disclosures or media investigations).

Report to the Minister

HSV's functions under the Act include the requirement to monitor compliance by public hospitals with purchasing policies and HSV directions, and to report irregularities to the Minister⁴. While HSV has this legislated responsibility, it will only report health service non-compliance to the Minister in the most serious of cases. HSV's reporting to the Minister will be conducted via the Department of Health.

This layer includes consideration and potential referral to the Independent Broad-based Anti-corruption Commission, Victorian Ombudsman or other relevant department for further investigation.

⁴ Subsection 131(d) of the Act refers.

4. Compliance information and support

4.1 Contact for further

HSV's Compliance Team can be contacted at compliance@healthsharevic.org.au.

4.2 Complaints

HSV has formal mechanisms in place to investigate complaints from organisations including mandated health services, suppliers and other stakeholders. The HSV [Complaints Management Policy](#) details the process for submitting a complaint to HSV. HSV manages any complaint submitted in accordance with this Policy.

5. More information

Related documents and templates are available on the HSV website.

6. Disclaimer

The information presented in this document is general in nature and based on HealthShare Victoria's interpretation of the *Health Services Act 1988* (Vic) and any ancillary legislation and regulations in effect at the time and should not be relied upon as legal advice. Please consider seeking professional and independent advice from your legal representative as to the applicability and suitability of this information and the legislation to your own business needs or circumstances.